

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HORACE J. GRIFFIN,

Plaintiff,

V.

GUY D. PIERCE, et al.,

Defendants.

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Civil No. **04-110-DRH**

REPORT AND RECOMMENDATION

PROUD, Magistrate Judge:

This Report and Recommendation is respectfully submitted to United States District Judge David R. Herndon in accordance with 28 U.S.C. §§ 636(b)(1)(B) and (C).

Before the Court is “Motion for Reconsideration” of the threshold order issued by U.S. District Judge David R. Herndon. **(Doc. 47)**. Defendant Brown was dismissed because plaintiff had alleged no more than negligence in treating plaintiff; defendant Gaetz was dismissed because plaintiff had failed to allege the necessary mental intent; defendant Henten was dismissed because there is no constitutional right to placement in the general prison population; defendant Pierce was dismissed because plaintiff had alleged no more than negligence in treating plaintiff; and defendant Ray was dismissed because there is no constitutional right to placement in the general prison population. **(Doc. 44)**. Plaintiff contends the Court erred in dismissing defendants Brown, Gaetz, Henten, Pierce and Ray. Plaintiff does not offer any specific legal argument, nor does he cite any flaws in the Court’s legal reasoning. Rather, plaintiff generally reasserts the allegations made in the complaint, adding new assertions in an attempt to cure the defects in his original pleading.

Absent a mistake in law, or mistake in construing plaintiff’s pro se, handwritten

complaint, there is no basis for upsetting the Court's threshold order dismissing defendants Brown, Gaetz, Henten, Pierce and Ray. Plaintiff's attempt to, in effect, amend the complaint and assert new facts and allegations comes too late. From this Court's perspective, there is no basis for even reconsidering the threshold order.

Recommendation

Fore the forestated reasons, it is this Court's recommendation that plaintiff's motion for reconsideration of the threshold order dismissing defendants Brown, Gaetz, Henten, Pierce and Ray (**Doc. 47**) be denied.

In accordance with 28 U.S.C. § 636(b)(1), the parties shall have through **May 12, 2005**, to file written objections to this Report and Recommendation.

DATED: April 25, 2005

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE